

FILE COPY

STATE OF WISCONSIN
BEFORE THE BOARD OF NURSING

IN THE MATTER OF THE DISCIPLINARY :
PROCEEDINGS AGAINST :

JEANNE KELLEY, R.N., :
RESPONDENT. :

FINAL DECISION AND ORDER
98NUR 059

LS9809175NUR

The parties to this action for the purposes of Wis. Stats. sec. 227.53 are:

Jeanne Kelley
2321 N. 70th Street
Wauwatosa, WI 53213

Wisconsin Board of Nursing
P.O. Box 8935
Madison, WI 53708-8935

Department of Regulation and Licensing
Division of Enforcement
P.O. Box 8935
Madison, WI 53708-8935

The parties in this matter agree to the terms and conditions of the attached Stipulation as the final decision of this matter, subject to the approval of the Board. The Board has reviewed this Stipulation and considers it acceptable.

Accordingly, the Board in this matter adopts the attached Stipulation and makes the following:

FINDINGS OF FACT

1. Jeanne Kelley (D.O.B. 12/24/54) is duly licensed in the state of Wisconsin as a registered nurse (license # 82731). This license was first granted on September 23, 1982.
2. Respondent's latest address on file with the Department of Regulation and Licensing is 2321 N. 70th Street, Wauwatosa, WI 53213.
3. On March 11, 1998, while employed as a registered nurse at Luther Manor Nursing Home, Milwaukee, Wisconsin, Respondent was administered a urine drug test as part of an investigation into missing controlled substances at the facility. The drug test report was positive for Xanax and Darvocet.

4. There is insufficient evidence that Respondent was responsible for the missing controlled substances at the facility; however Respondent admitted that she obtained Darvocet without a prescription for her personal use from an aunt to treat headache. In her explanation to the Division, Respondent stated "She wasn't giving me bottles of pills; she would put a handful in an envelope."

Respondent did have a 1996 prescription for Xanax which she claims was used by her in March of 1998.

5. Respondent has been treated recently by the Milwaukee Medical Clinic for hypertension, abnormal EKG and depression. There is no indication in her medical record of a chemical dependency.

CONCLUSIONS OF LAW

By the conduct described above, Jeanne Kelley is subject to disciplinary action against her license to practice as a registered nurse in the state of Wisconsin, pursuant to Wis. Stats. sec. 441.07(1)(b) and (d), and Wis. Adm. Code sec. N 7.04 (1), (2) and (15).


ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that :

1. Jeanne Kelley is REPRIMANDED for her unprofessional conduct.
2. The rights of a party aggrieved by this Decision to petition the Board for rehearing and to petition for judicial review are set forth on the attached "Notice of Appeal Information".
3. This Order shall become effective upon the date of its signing.

WISCONSIN BOARD OF NURSING

By:


A Member of the Board

17 SEP 98
Date

jh

STATE OF WISCONSIN

BEFORE THE BOARD OF NURSING

IN THE MATTER OF THE DISCIPLINARY
PROCEEDINGS AGAINST

JEANNE KELLEY, R.N.,
RESPONDENT.

STIPULATION
98 NUR 059

It is hereby stipulated between Jeanne Kelley, personally on her own behalf, and James W. Harris, Attorney for the Department of Regulation and Licensing, Division of Enforcement, as follows that:

1. This Stipulation is entered into as a result of a pending investigation of Respondent's licensure by the Division of Enforcement. Respondent consents to the resolution of this investigation by Stipulation and without the issuance of a formal complaint.
2. Respondent understands that by the signing of this Stipulation she voluntarily and knowingly waives her rights, including: the right to a hearing on the allegations against her, at which time the state has the burden of proving those allegations by a preponderance of the evidence; the right to confront and cross-examine the witnesses against her; the right to call witnesses on her behalf and to compel their attendance by subpoena; the right to testify herself; the right to file objections to any proposed decision and to present briefs or oral arguments to the officials who are to render the final decision; the right to petition for rehearing; and all other applicable rights afforded to her under the United States Constitution, the Wisconsin Constitution, the Wisconsin Statutes, and the Wisconsin Administrative Code.
3. Respondent is aware of her right to seek legal representation and has been provided the opportunity to seek legal advice prior to signing this Stipulation.
4. Respondent agrees to the adoption of the attached Final Decision and Order by the Board of Nursing. The parties to the Stipulation consent to the entry of the attached Final Decision and Order without further notice, pleading, appearance or consent of the parties. Respondent waives all rights to any appeal of the Board's order, if adopted in the form as attached.
5. If the terms of this Stipulation are not acceptable to the Board, the parties shall not be bound by the contents of this Stipulation, and the matter shall be returned to the Division of Enforcement for further proceedings. In the event that this Stipulation is not accepted by the Board, the parties agree not to contend that the Board has been prejudiced or biased in any manner by the consideration of this attempted resolution.

- Jeanne Kelley R.N. Date 8-11-98


James W. Harris, Attorney
Division of Enforcement


Date

STATE OF WISCONSIN
DEPARTMENT OF REGULATION AND LICENSING
BEFORE THE BOARD OF NURSING

In the Matter of the Disciplinary Proceedings Against

Jeanne Kelley, R.N.,

AFFIDAVIT OF MAILING

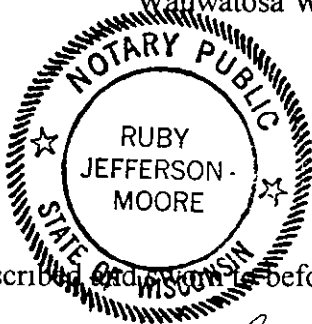
Respondent.

STATE OF WISCONSIN)
)
COUNTY OF DANE)

I, Kate Rotenberg, having been duly sworn on oath, state the following to be true and correct based on my personal knowledge:

1. I am employed by the Wisconsin Department of Regulation and Licensing.
2. On September 21, 1998, I served the Final Decision and Order dated September 17, 1998, LS9809175NUR, upon the Respondent Jeanne Kelley, R.N. by enclosing a true and accurate copy of the above-described document in an envelope properly stamped and addressed to the above-named Respondent and placing the envelope in the State of Wisconsin mail system to be mailed by the United States Post Office by certified mail. The certified mail receipt number on the envelope is Z 233 819 806.
3. The address used for mailing the Decision is the address that appears in the records of the Department as the Respondent's last-known address and is:

Jeanne Kelley, R.N.
2321 N. 70th Street
Wauwatosa WI 53213



Subscribed and sworn to before me

this 21st day of September, 1998.

Ruby Jefferson-Moore
Notary Public, State of Wisconsin
My commission is permanent.

Kate Rotenberg
Kate Rotenberg
Department of Regulation and Licensing
Office of Legal Counsel

NOTICE OF RIGHTS OF APPEAL

TO: JEANNE KELLEY RN

You have been issued an Order. For purposes of service the date of mailing of this Order is 9/21/98. Your rights to request a rehearing and/or judicial review are summarized below and set forth fully in the statutes reprinted on the reverse side.

A. REHEARING.

Any person aggrieved by this order may file a written petition for rehearing within 20 days after service of this order, as provided in section 227.49 of the Wisconsin Statutes. The 20 day period commences on the day of personal service or the date of mailing of this decision. The date of mailing of this Order is shown above.

A petition for rehearing should name as respondent and be filed with the party identified below.

A petition for rehearing shall specify in detail the grounds for relief sought and supporting authorities. Rehearing will be granted only on the basis of some material error of law, material error of fact, or new evidence sufficiently strong to reverse or modify the Order which could not have been previously discovered by due diligence. The agency may order a rehearing or enter an order disposing of the petition without a hearing. If the agency does not enter an order disposing of the petition within 30 days of the filing of the petition, the petition shall be deemed to have been denied at the end of the 30 day period.

A petition for rehearing is not a prerequisite for judicial review.

B. JUDICIAL REVIEW.

Any person aggrieved by this decision may petition for judicial review as specified in section 227.53, Wisconsin Statutes (copy on reverse side). The petition for judicial review must be filed in circuit court where the petitioner resides, except if the petitioner is a non-resident of the state, the proceedings shall be in the circuit court for Dane County. The petition should name as the respondent the Department, Board, Examining Board, or Affiliated Credentialing Board which issued the Order. A copy of the petition for judicial review must also be served upon the respondent at the address listed below.

A petition for judicial review must be served personally or by certified mail on the respondent and filed with the court within 30 days after service of the Order if there is no petition for rehearing, or within 30 days after service of the order finally disposing of a petition for rehearing, or within 30 days after the final disposition by operation of law of any petition for rehearing. Courts have held that the right to judicial review of administrative agency decisions is dependent upon strict compliance with the requirements of sec. 227.53 (1) (a), Stats. This statute requires, among other things, that a petition for review be served upon the agency and be filed with the clerk of the circuit court within the applicable thirty day period.

The 30 day period for serving and filing a petition for judicial review commences on the day after personal service or mailing of the Order by the agency, or, if a petition for rehearing has been timely filed, the day after personal service or mailing of a final decision or disposition by the agency of the petition for rehearing, or the day after the final disposition by operation of the law of a petition for rehearing. The date of mailing of this Order is shown above.

The petition shall state the nature of the petitioner's interest, the facts showing that the petitioner is a person aggrieved by the decision, and the grounds specified in section 227.57, Wisconsin Statutes, upon which the petitioner contends that the decision should be reversed or modified. The petition shall be entitled in the name of the person serving it as Petitioner and the Respondent as described below.

SERVE PETITION FOR REHEARING OR JUDICIAL REVIEW ON:

STATE OF WISCONSIN BOARD OF NURSING

1400 East Washington Avenue
P.O. Box 8935
Madison WI 53708-8935